THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION NO 13536 of 2004

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Dated: 20.09.2005

Between:

1. The General Manager,

South Eastern Railway,

11, Garden Reach Road,

Kolkata and two others. .. **Petitioners**

And

1. K. Damodar Rao,

S/o late Keshava Rao **.. Respondent**

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

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THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION NO :13536 of 2004

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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

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This writ petition is filed seeking a direction, in the nature of writ of mandamus, to set aside the Order dated 18.3.2004 in O.A.No.924 of 2003 on the file of the Central

Administrative Tribunal, Hyderabad.

The petitioners herein are the respondents and the respondent herein is the applicant in the O.A. For the sake of convenience, the parties will be referred to herein as arrayed in the O.A.

The brief facts in the O.A. are that on the allegation that the applicant forged and tampered the Privilege Ticket Order No.145866 (PTO), dated 24.1.1984 and inserted the name of his wife K.Uma and thus, misused the PTO by exchanging the PTO and obtaining the traveling ticket from the booking office at Adra, an enquiry was conducted. Basing on the enquiry report, the applicant was removed from service. Against such removal order, the applicant preferred an appeal before the Appellate Authority and the said appeal was dismissed. Aggrieved by the same, the applicant preferred a revision and the said revision was also dismissed. Having aggrieved by the same, the applicant filed the present O.A. The Tribunal while setting aside the removal order observed that the respondents have neither afforded any opportunity nor supplied the documents, which would be relevant to his case, to the applicant despite his request, and directed the respondents to initiate fresh enquiry by supplying the relevant documents including the original copy of the PTO in their possession to the applicant and start the proceedings from the enquiry stage onwards denovo. The tribunal further directed the respondents to reinstate the applicant into service with all consequential benefits from the stage from which the enquiry proceedings were vitiated due to non-supply of relevant documents to the applicant. Having aggrieved by the same, the present writ petition is preferred by the Railway-department.

Heard the learned counsel.

The learned Standing Counsel for the respondents-writ petitioners contends that several opportunities were given to the applicant during the course of enquiry and basing on the report, a notice along with enquiry report was also issued to him to submit his final statement and after submission of his explanation, the punishment was imposed against the applicant and therefore, the Tribunal is not justified in passing the order impugned and hence, the order of the tribunal is liable to be set aside.

On the other hand, the learned Counsel for the respondent-applicant contends that basing on the Xerox copy of PTO sent by the applicant himself

informing that his P.T.O. is being misused by somebody, the enquiry proceedings were initiated and the original PTO, which is a crucial document for deciding the issue, has not been supplied to him in spite of his request and therefore, the findings recorded by the Tribunal need no interference.

Perused the material available on record and the order impugned.

As can be seen from the record, it is apparent that one K. Uma, filed a Matrimonial case in O.P. No.39 of 1992 seeking divorce by falsely claiming her status as the wife of the applicant and she produced Xerox copy of PTO as evidence. The said suit was dismissed on the ground that there was no marriage between the applicant and K. Uma.

The applicant himself brought the mischief that took place in connection with PTO to the notice of the department and also sent a Xerox copy of the same. Basing on the Xerox copy sent by the applicant, the departmental proceedings were launched.

Before adverting to decide the issue in this matter, it is not out of place to mention the procedure of issuing PTOs.

PTO consists of three stages, viz., one will be retained with railway department, the second one will be with the Ticket Issuing Counter and the third one will be retained by the Officer, in whose favour such pass is issued.

It is the contention of the learned Counsel for the applicant that basing on the Xerox copy of PTO sent by the applicant, all proceedings were launched and the Xerox copy does not bear the signature of the applicant and hence, he demanded for supply of original PTO but the authorities have not supplied the same.

The order impugned clearly goes to show that the copy of original PTO has not been supplied to the applicant. In a case of this nature, copies of documents, which are basis for the enquiry proceedings, must be supplied to the person against whom the charges are levelled, so as to enable him to put forth his defence. In the instant case, admittedly, copies of documents were not supplied to the applicant. In this background of the matter, it can be inferred that there are no bonafides on the part of the department in proceeding with the enquiry in accordance with law.

In that view of the matter, we hold that the enquiry conducted by the

department without giving any opportunity and without supplying copies of documents to the applicant, amounts to violation principles of nature justice and the Rules and as such, the enquiry proceedings, itself are liable to be vitiated. In this view of the matter, we feel that the tribunal is justified in directing the respondents to conduct fresh enquiry after affording a reasonable opportunity to the applicant and supplying the relevant documents to him and as such, the order impugned, does not warrant any interference by this Court.

But, however, in view of the gravity of the charge leveled against the applicant, we deem it appropriate to modify the order of the Tribunal to the effect that the reinstatement of the applicant and the consequential benefits awarded by the Tribunal, shall be subject to the outcome of the enquiry/disciplinary proceedings to be launched by the respondents-department after affording an opportunity and after supplying the copies of relevant documents to the applicant. It is made clear that the enquiry/disciplinary proceedings shall be completed within a period of six months from the date of receipt of a copy of this Order. It is needless to observe that if the department fails to complete the enquiry within the above stipulated period, the order of the Tribunal as to the consequential benefits, shall automatically become operative.

Subject to the above observations, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice P. Lakshmana Reddy

Dated: 20.09.2005

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